

# **Exhibit 211**

1  
2 UNITED STATES DISTRICT COURT  
3 FOR THE SOUTHERN DISTRICT OF NEW YORK

4 In re: :  
5 : Master File No.  
6 Global Brokerage, Inc. : 1:17-cv-00916-RA  
7 F/k/a FXCM, Inc. :  
8 Securities Litigation :  
9 ----- :

10 CONFIDENTIAL

11 REMOTE VIDEO DEPOSITION OF:

12 DROR NIV

13 THURSDAY, FEBRUARY 11, 2021  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

24 REPORTED BY:

25 SILVIA P. WAGE, CCR, CRR, RPR

|  |   |
|--|---|
| <p style="text-align: right;">Page 130</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 agreement dated March 1st, 2010, which is hereby</p> <p>3 terminated in its entirety and superceded by this</p> <p>4 agreement."</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. And were you aware that this</p> <p>8 agreement superceded the March 1 Services</p> <p>9 Agreement?</p> <p>10 A. I'm not aware of specifics.</p> <p>11 Q. Were you --</p> <p>12 A. It makes sense to because we -- to</p> <p>13 trade with all of the clients, you know, with all</p> <p>14 of the entities of FXCM, you can't just do it</p> <p>15 with the US entity because the trades from the</p> <p>16 other entities go -- don't go to the US entity.</p> <p>17 Q. Okay.</p> <p>18 A. So, if you wanted to trade with</p> <p>19 clients outside of the United States, you would</p> <p>20 have to do it with Holdings.</p> <p>21 THE STENOGRAPHER: I'm sorry. You</p> <p>22 have would have to do with what?</p> <p>23 MR. DAHAN: Holdings.</p> <p>24 A. You would have to do it with FXCM</p> <p>25 Holdings.</p>   | <p style="text-align: right;">Page 132</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 subsidiaries. And so by having one agreement</p> <p>3 with Holdings, it, essentially, allows you to do</p> <p>4 business with all of the FXCM Global retail</p> <p>5 trading subsidiaries and some of the</p> <p>6 institutional ones and all the institution ones</p> <p>7 too.</p> <p>8 So it is just -- you know, instead of</p> <p>9 signing many agreements, it's just easier to deal</p> <p>10 with one entity and that was the practice that we</p> <p>11 did with most of our vendors.</p> <p>12 Q. Did other liquidity providers have</p> <p>13 similar services agreements with FXCM at this</p> <p>14 time?</p> <p>15 A. Most banks have -- there's different</p> <p>16 people have different ones. So most back have an</p> <p>17 ISDA agreement, which is, obviously, they provide</p> <p>18 and then there is other, you know, side letter</p> <p>19 agreements about, you know, things like, you</p> <p>20 know, payment for order flow arrangements like we</p> <p>21 had with BNP or with Goldman Sachs. Those are</p> <p>22 usually outside the ISDA. But it starts with an</p> <p>23 ISDA. But, obviously, those documents are</p> <p>24 completely different. Because there are</p> <p>25 different banks and they have their own way of</p> |
| <p style="text-align: right;">Page 131</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 Q. Thank you. I was just going to ask</p> <p>3 the same.</p> <p>4 Okay. Were you generally aware that</p> <p>5 Effex had an original services agreement with</p> <p>6 FXCM US that was later replaced with a services</p> <p>7 agreement with FXCM Holdings?</p> <p>8 A. Do I recall the specifics, no. It</p> <p>9 makes no sense that he would have -- I mean, it's</p> <p>10 just sloppy lawyering, if you had a good</p> <p>11 (UNINTELLIGIBLE), because it's not how, you know,</p> <p>12 it's supposed to be with Holdings, if he wants to</p> <p>13 do business globally.</p> <p>14 Q. Other than changing from FXCM US to</p> <p>15 FXCM Holdings, were you aware of any significant</p> <p>16 changes between the two services agreements that</p> <p>17 we looked at today?</p> <p>18 A. I am not aware.</p> <p>19 Q. And I think you mentioned this</p> <p>20 earlier.</p> <p>21 But do you know why the decision was</p> <p>22 made to change the counterparty from FXCM US to</p> <p>23 FXCM Holdings?</p> <p>24 A. Yes. So FXCM Holdings is the sole</p> <p>25 shareholder of all the FXCM retail operating</p> | <p style="text-align: right;">Page 133</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 doing it.</p> <p>3 Q. So was it your understanding that</p> <p>4 Effex needed to have a services agreement with</p> <p>5 FXCM in order to provide liquidity to FXCM?</p> <p>6 A. No. It needed a, you know, services</p> <p>7 agreement, you know, in terms of, you know, the</p> <p>8 payment for order flow and all of the obligations</p> <p>9 and the responsibilities and the conditions that</p> <p>10 come with a payment for order flow.</p> <p>11 Q. Do you recall any discussions about</p> <p>12 changing the counterparty to the services</p> <p>13 agreement with Effex from FXCM US to FXCM</p> <p>14 Holdings?</p> <p>15 A. I don't. I don't deal with those</p> <p>16 details that I, you know, should have been with</p> <p>17 Holdings in the first place.</p> <p>18 Q. And so is it your understanding that</p> <p>19 Effex made payments for order flow to FXCM</p> <p>20 Holdings?</p> <p>21 A. That should have been the case. But</p> <p>22 I don't recall the -- again, I'm not in</p> <p>23 accounting, so I don't know where -- which bank</p> <p>24 account this all went into.</p> <p>25 Q. Other than the payments from Effex,</p>  |

|   |   |
|---|---|
| <p style="text-align: right;">Page 166</p> <p>1           CONFIDENTIAL - DROR NIV</p> <p>2     the decision -- I made decision to terminate for</p> <p>3     all the, you know, for all of the entities.</p> <p>4           Q. Understood.</p> <p>5           Did the NFA at any point investigate</p> <p>6     FXCM's relationship with Effex?</p> <p>7           A. Yes.</p> <p>8           Q. And when did you first become aware</p> <p>9     of the NFA's investigation into FXCM's</p> <p>10    relationship with Effex?</p> <p>11          A. I do not recall exact dates. But I</p> <p>12    do recall making a presentation answering</p> <p>13    questions in 2013 at NFA offices in Chicago. But</p> <p>14    I'm sure we answered questions by e-mail and by</p> <p>15    phone even before that. Obviously, the NFA gets</p> <p>16    -- all the regulators, basically, get -- all the</p> <p>17    regulated entities have a trading reporting</p> <p>18    system so they get to see all the trades that our</p> <p>19    clients do, with who they do it with and, you</p> <p>20    know, what prices they got. And they will</p> <p>21    routinely send us an inquiry saying, oh, we saw</p> <p>22    this type of trade, this event occurred, please</p> <p>23    explain, right. So we would get that on a</p> <p>24    routine basis and, you know, they inquired about</p> <p>25    Effex because Effex came up, obviously, in that</p>          | <p style="text-align: right;">Page 168</p> <p>1           CONFIDENTIAL - DROR NIV</p> <p>2     were investigating, you know, pieces of it, but,</p> <p>3     you know, this is standard practice and this was</p> <p>4     something that everybody does and, by the way,</p> <p>5     still do outside of the UK. You have --</p> <p>6           Q. And --</p> <p>7           A. -- wrong and this did not become</p> <p>8     Global best practice. It is just a UK best</p> <p>9     practice.</p> <p>10          Q. So understanding that the UK</p> <p>11    regulator -- their decision was the impetus for</p> <p>12    these discussions in this decision, did the fact</p> <p>13    that the NFA was investigating FXCM's</p> <p>14    relationship with Effex play any factor in the</p> <p>15    decision to stop order flow payments from Effex?</p> <p>16          MR. DAHAN: Asked and answered.</p> <p>17          Q. You can answer.</p> <p>18          A. I mean, that's what I just explained.</p> <p>19    It is an issue of, we understand if from -- from</p> <p>20    an optics perspective, this -- the regulators did</p> <p>21    not like the practice, yet, you know, the</p> <p>22    regulators allow the practice, you know, and the</p> <p>23    regulators, you know, absolutely, you know, still</p> <p>24    -- again, this practice continues at all the</p> <p>25    major brokerage firms today anyway.</p>              |
| <p style="text-align: right;">Page 167</p> <p>1           CONFIDENTIAL - DROR NIV</p> <p>2     -- in the regulatory -- in that regulatory</p> <p>3     reporting system.</p> <p>4           Q. And did the CFTC investigate FXCM's</p> <p>5     relationship with Effex?</p> <p>6           A. I believe so on a much later date. I</p> <p>7     don't recall when.</p> <p>8           Q. Do you remember what year 2013, 2014?</p> <p>9           A. It's all a blur and I don't recall.</p> <p>10          Q. Do you recall if you first became</p> <p>11    aware of the CFTC investigation before FXCM</p> <p>12    stopped taking order flow payments from Effex?</p> <p>13          A. The NFA one, I know that's the case.</p> <p>14    The CFTC one, I don't -- I'm not sure.</p> <p>15          Q. Was the NFA investigation a factor in</p> <p>16    your decision for FXCM to start -- to stop</p> <p>17    charging Effex for order flow?</p> <p>18          A. No, it was the determination for the</p> <p>19    -- it was the determination of the UK authorities</p> <p>20    not to do it, which then we figured this is going</p> <p>21    to, you know, become some best practices thing</p> <p>22    that is likely to happen anyway and might as well</p> <p>23    get ahead of it and terminate it because clearly</p> <p>24    the regulators don't like it. But it is -- when</p> <p>25    the UK regulator said, no -- because, again, they</p> | <p style="text-align: right;">Page 169</p> <p>1           CONFIDENTIAL - DROR NIV</p> <p>2           Q. And --</p> <p>3           A. The NFA and CFTC do not allow this in</p> <p>4     the futures, because in futures there's no</p> <p>5     practical way to do it and so they're not</p> <p>6     familiar with it like the SEC is familiar with it</p> <p>7     in equities but -- because of the monopoly status</p> <p>8     of our futures exchanges operate. But in</p> <p>9     equities where there's 40 plus venues and there's</p> <p>10    real competition for trades, there is absolute</p> <p>11    payment for order flow.</p> <p>12          So the -- you know, Effex is like</p> <p>13    equities. There is lots of venue competition,</p> <p>14    okay, and therefore there's payment for order</p> <p>15    flow. So we thought this was fine. They did not</p> <p>16    and this clearly played some role in our decision</p> <p>17    that, you know, we thought eventually the US</p> <p>18    regulators would reach the same conclusion that</p> <p>19    the UK regulators did, okay. They never did, but</p> <p>20    that's what we thought they would.</p> <p>21          Q. Okay. And you said, "from an optics</p> <p>22    perspective" the regulators did not like this</p> <p>23    practice of payments for order flow.</p> <p>24          Are you referring to the NFA as one</p> <p>25    of those regulators?</p> |

|   |   |
|---|---|
| <p style="text-align: right;">Page 214</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 for dollar/yen trading volume at this time?</p> <p>3 A. Right.</p> <p>4 Q. I believe you referenced that earlier</p> <p>5 that you were generally aware of the fact that</p> <p>6 FXCM was billing Effex separately for dollar/yen</p> <p>7 flow at a different rate?</p> <p>8 A. Correct.</p> <p>9 Q. And were you aware of any service</p> <p>10 agreement or amendment to a services agreement</p> <p>11 reflecting the dollar/yen flow being separated?</p> <p>12 A. I am not. Again, not details I would</p> <p>13 be familiar with.</p> <p>14 Q. Okay. And you were involved in the</p> <p>15 discussions or the decision to bill Effex at a \$3</p> <p>16 per million rate when the decision was made?</p> <p>17 A. Yeah, I would have to approve it,</p> <p>18 yes.</p> <p>19 Q. Okay. I'm going to show you another</p> <p>20 document, another document for now.</p> <p>21 (Deposition Exhibit 54, 8/13/13</p> <p>22 e-mail from Baruch Greenbaum to Chris Meyer and</p> <p>23 attachment GLBR_00185332 &amp; GLBR_00185333 marked</p> <p>24 Confidential, was marked for identification.)</p> <p>25 Q. Okay. Exhibit 54 should be up.</p> | <p style="text-align: right;">Page 216</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 euro/dollar order flow?</p> <p>3 A. Again, I do not remember the</p> <p>4 specifics of the meetings and the times but, yes.</p> <p>5 Q. And do you recall any discussion</p> <p>6 about amending a services agreement or signing a</p> <p>7 new services agreement to reflect that change?</p> <p>8 A. I do not.</p> <p>9 Q. Okay.</p> <p>10 A. It would be somebody else's job to do</p> <p>11 those service agreement changes.</p> <p>12 Q. Okay. Let me show you the next</p> <p>13 document.</p> <p>14 A. And, again, this is reflecting that</p> <p>15 in less than three years after starting this</p> <p>16 arrangement, spreads have fallen so much already,</p> <p>17 right, and tightened that much that, basically,</p> <p>18 you know, they are making, you know, a hell of</p> <p>19 lot less, you know, per million traded because,</p> <p>20 you know, spreads have tightened so much for</p> <p>21 customer. And so customers are receiving, you</p> <p>22 know -- the Effex relationship worked really well</p> <p>23 in tightening those spreads, you know, for the</p> <p>24 whole market, actually.</p> <p>25 Q. Okay. I've introduced Exhibit 55.</p> |
| <p style="text-align: right;">Page 215</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 Please let me know when you can see it and take a</p> <p>3 minute to review.</p> <p>4 MR. BAKER: For the record,</p> <p>5 Exhibit 54 is GLBR 185332 and an attachment GLBR</p> <p>6 185333.</p> <p>7 Q. Mr. Niv, just let me know when you're</p> <p>8 ready.</p> <p>9 A. I'm ready.</p> <p>10 Q. Okay. Again, I'll let you know that</p> <p>11 you don't appear to be on this e-mail, but does</p> <p>12 this appear to be an e-mail from Baruch Greenbaum</p> <p>13 and attachment to that e-mail?</p> <p>14 A. Yes.</p> <p>15 Q. And does the attachment appear to be</p> <p>16 an invoice from FXCM to Effex for order flow for</p> <p>17 June 2013?</p> <p>18 A. Yes.</p> <p>19 Q. And does it appear that FXCM was</p> <p>20 telling Effex \$6 per million for euro/dollar</p> <p>21 volume, \$3 per million for dollar/yen and \$16 per</p> <p>22 million for all other currencies?</p> <p>23 A. Correct.</p> <p>24 Q. And were you involved in the decision</p> <p>25 to bill Effex separately at \$6 per million for</p>  | <p style="text-align: right;">Page 217</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 (Deposition Exhibit 55, e-mail string</p> <p>3 GLBR_00004281 to GLBR_00004283 marked</p> <p>4 Confidential, was marked for identification.)</p> <p>5 Q. Let me know when you can see it and</p> <p>6 take a minute to review.</p> <p>7 MR. BAKER: For the record,</p> <p>8 Exhibit 55 is GLBR 4281.</p> <p>9 Q. And Mr. Niv, just let me know when</p> <p>10 you're ready.</p> <p>11 A. I'm reading.</p> <p>12 Go ahead, I'm ready.</p> <p>13 Q. Okay. Is this an e-mail chain</p> <p>14 between Ms. Muchinsky, yourself and Mr. Ahdout?</p> <p>15 A. Yes.</p> <p>16 Q. And is this a discussion about how to</p> <p>17 disclose information to FXCM's liquidity</p> <p>18 providers about the share of FXCM's retail flow</p> <p>19 that different liquidity providers were</p> <p>20 capturing?</p> <p>21 A. Correct.</p> <p>22 Q. And if you look at your e-mail, the</p> <p>23 second e-mail from the top, this is from you at</p> <p>24 1:04 p.m. You write, "Provided in lump all funds</p> <p>25 like Sun, Lucid and Effex into one bucket and</p>  |

55 (Pages 214 - 217)

|   |  |
|---|--|
| <p style="text-align: right;">Page 218</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 tell the banks it's three funds that share the</p> <p>3 pie. Don't give specifics."</p> <p>4 Were you instructing Ms. Muchinsky to</p> <p>5 provide market share information under the</p> <p>6 liquidity providers that did not reveal Effex's</p> <p>7 market share?</p> <p>8 MR. DAHAN: Objection to form.</p> <p>9 A. Yes, to provide it in lump sum all</p> <p>10 the funds that are not banks.</p> <p>11 Q. And did you not want other liquidity</p> <p>12 providers to know what Effex's market share was</p> <p>13 of FXCM's retail flow?</p> <p>14 A. I don't think that was the intention.</p> <p>15 The intention is not to reveal competitive</p> <p>16 information.</p> <p>17 Q. What "competitive information," in</p> <p>18 particular?</p> <p>19 A. Who is winning our flow and why</p> <p>20 they're winning our flow, you know. You don't</p> <p>21 need this to, you know, like people -- if someone</p> <p>22 is very successful, other competitors will hunt</p> <p>23 down their quants and, you know, offer them a job</p> <p>24 and, you know, steal them away. We, you know, we</p> <p>25 needed to protect our, you know, our secret</p>                         | <p style="text-align: right;">Page 220</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 Q. And, Mr. Niv -- well, first, are you</p> <p>3 able to see the document?</p> <p>4 A. Yes.</p> <p>5 Q. Take a minute to review. I'll note</p> <p>6 that the bottom e-mail is quite detailed and</p> <p>7 lengthy. I'm not going to be asking you much</p> <p>8 detail about that. But feel free to review it</p> <p>9 for context, if you need. So just let me know</p> <p>10 when you're ready to go forward.</p> <p>11 A. Okay.</p> <p>12 Q. Okay. Is this an e-mail chain</p> <p>13 between yourself, Mr. Dittami and Chris Meyer?</p> <p>14 A. Yes.</p> <p>15 Q. And Chris Meyer worked for Effex; is</p> <p>16 that right?</p> <p>17 A. Yes.</p> <p>18 Q. Was he the COO of Effex?</p> <p>19 A. Something like -- there was like the</p> <p>20 business development/COO, yeah, one of those</p> <p>21 things. But I don't remember exactly.</p> <p>22 Q. Is this a discussion about Effex</p> <p>23 turning off its liquidity to FXCM for certain</p> <p>24 currency pairs in particular instance?</p> <p>25 A. Yes.</p>  |
| <p style="text-align: right;">Page 219</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 sauce.</p> <p>3 Q. Were there any reasons that you</p> <p>4 didn't want other liquidity providers to know how</p> <p>5 much market flow -- market share Effex was</p> <p>6 capturing from FXCM's trading flow?</p> <p>7 MR. DAHAN: Objection to form. I</p> <p>8 think he just answered that.</p> <p>9 A. I think, again, it's -- these are</p> <p>10 trade secrets. These are things that we do not</p> <p>11 -- you know, these are vendors of ours. We do</p> <p>12 not owe them some duty of care. They are not our</p> <p>13 customers, you know. We don't have to disclose</p> <p>14 to them anything, right. They're the ones -- you</p> <p>15 know, they all know that there's competition.</p> <p>16 Again, that's what it comes down to. They don't</p> <p>17 need to know from whom.</p> <p>18 Q. Let me show you the next document.</p> <p>19 (Deposition Exhibit 56, e-mail string</p> <p>20 GLBR_00004443 to GLBR_00004445 marked</p> <p>21 Confidential, was marked for identification.)</p> <p>22 Q. Okay. This is Exhibit 56. It should</p> <p>23 be up now. Let me know when you can see it.</p> <p>24 MR. BAKER: For the record,</p> <p>25 Exhibit 56 is GLBR 4443.</p> | <p style="text-align: right;">Page 221</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 Q. And was this in connection with FXCM</p> <p>3 retail flow?</p> <p>4 A. I don't recall. You know, I have to</p> <p>5 read the whole e-mail to figure that out. I</p> <p>6 don't recall this one.</p> <p>7 Q. Well, I think, read as much as you</p> <p>8 need to be able to answer the question, if you</p> <p>9 think that will help.</p> <p>10 A. I'm not sure what segment of the</p> <p>11 business this is, which entity, you know.</p> <p>12 There's -- it could be for some of the retail</p> <p>13 business too. I'm not -- I'm not certain.</p> <p>14 Q. Okay. I'm going to focus you down to</p> <p>15 your e-mail at the bottom of Page 1 at 1:42 p.m.</p> <p>16 A. Hold on. Okay.</p> <p>17 Q. And starting in the second -- in the</p> <p>18 second line, you see where you write, "P&amp;L is</p> <p>19 key"?</p> <p>20 A. Uh-huh. I see it.</p> <p>21 Q. At end of the paragraph you write, "I</p> <p>22 definitely wouldn't want to protect others at the</p> <p>23 expense of P&amp;L."</p> <p>24 So, first, what did you mean by, "P&amp;L</p> <p>25 is key"?</p> |

|  |  |
|--|--|
| <p style="text-align: right;">Page 234</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 down to your e-mail at the bottom of page where</p> <p>3 you see you have a number of numbered paragraphs?</p> <p>4 I'm going to point you to paragraph numbered</p> <p>5 three.</p> <p>6 A. Yes.</p> <p>7 Q. And starting toward the end of the</p> <p>8 first line you write, "80 percent of their</p> <p>9 revenues come from FXCM's retail and</p> <p>10 institutional volume that they make markets to so</p> <p>11 they have a lot to lose if they piss us off."</p> <p>12 Are you referring to Effex there?</p> <p>13 A. Yeah. I mean, it turns out that</p> <p>14 static wasn't true, because by that time a much</p> <p>15 larger percentage of their business -- over</p> <p>16 50 percent was coming from other relationships.</p> <p>17 But, you know, we -- I kind of took the statistic</p> <p>18 from early on in the relationship. I was not</p> <p>19 aware, you know, that things have changed so much</p> <p>20 and he had so many new clients. So, I mean,</p> <p>21 later on I realized, but at the time I thought</p> <p>22 this was kind of late 2010 or turned out where</p> <p>23 the figure was more true but by 2014 that was far</p> <p>24 from true.</p> <p>25 Q. And how did you come by that</p> | <p style="text-align: right;">Page 236</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 you about anything you spoke about with your</p> <p>3 Counsel.</p> <p>4 So, aside from any conversations with</p> <p>5 your Counsel, was there any other basis from</p> <p>6 which you said 80 percent was the statistic early</p> <p>7 on and at this point you said you believed it was</p> <p>8 --</p> <p>9 A. We only had anecdotal reading --</p> <p>10 Q. -- business?</p> <p>11 A. I mean, we only had -- sorry for</p> <p>12 talking over.</p> <p>13 We only had anecdotal reading of his</p> <p>14 business from what he would tell us. Again, in</p> <p>15 the beginning, he would give us more detailed</p> <p>16 updates. We -- you know, as he got a lot of</p> <p>17 other revenues, business grew. We had a lot more</p> <p>18 clients. We would not have transparency as to</p> <p>19 what size of his business was or how big he was</p> <p>20 with other people.</p> <p>21 We thought he was -- you know, a lot</p> <p>22 of it was still ours and we were, I believe, the</p> <p>23 biggest client, but we were clearly not the bulk</p> <p>24 of his business anyway at this time.</p> <p>25 Q. Okay. And do you recall around this</p>   |
| <p style="text-align: right;">Page 235</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 information of what portion of Effex's business</p> <p>3 came from FXCM versus other sources?</p> <p>4 A. Well, in 2010, John sort of just gave</p> <p>5 me some hints, you know, but afterwards I don't</p> <p>6 remember when exactly, but, you know, sooner</p> <p>7 thereafter he would not give me exactly and he</p> <p>8 certainly never spoke about --</p> <p>9 MR. DAHAN: Drew, your voice is</p> <p>10 getting away from the computer.</p> <p>11 THE WITNESS: Oh, sorry.</p> <p>12 A. He, certainly, would not give me</p> <p>13 specific numbers of what he's doing with other</p> <p>14 counterparties. He would just say, you know,</p> <p>15 you're still my largest client. I do a lot of</p> <p>16 business with you, you know. I kind of threw</p> <p>17 those numbers out there. But, you know,</p> <p>18 obviously, we found out later on and, actually,</p> <p>19 you know, one of the reasons I know some of this</p> <p>20 stuff is because, you know, you know, Israel told</p> <p>21 me from --</p> <p>22 MR. DAHAN: Hey, hey, hey --</p> <p>23 A. -- it was from John Dittami.</p> <p>24 MR. DAHAN: Yeah, no.</p> <p>25 Q. Yeah. Mr. Niv, I'm not going to ask</p>                                     | <p style="text-align: right;">Page 237</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 time about how much of Effex's business that came</p> <p>3 from FXCM was retail versus institutional volume?</p> <p>4 A. I don't recall.</p> <p>5 Q. Okay. And back to your e-mail here.</p> <p>6 What did you mean by, "they have a</p> <p>7 lot to lose if they piss us off"?</p> <p>8 A. Well, we were one of their big</p> <p>9 clients. So they -- you know, they were not --</p> <p>10 if they screw you over given that you are -- you</p> <p>11 know, Mr. Palchak, you or us, you are not going</p> <p>12 to screw us over. So, cause he is looking at the</p> <p>13 life as FXCM Capital is a competitor of his,</p> <p>14 right, because they're a high frequency trading</p> <p>15 operation too. He does not want to sell them,</p> <p>16 you know, an intellectual property.</p> <p>17 I said, one, you will make more money</p> <p>18 selling them that, right, and, two -- and, again,</p> <p>19 we are 50 percent owner of this. And, you know,</p> <p>20 two, that he's not a really in competition and</p> <p>21 he's not going to get into your business because,</p> <p>22 you know, he's not going to piss us off. That</p> <p>23 was my intent in this e-mail.</p> <p>24 Q. And when you say, "We are 50 percent</p> <p>25 owner of this," what are you referring to?</p> |



|   |  |
|---|--|
| <p style="text-align: right;">Page 254</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 This was I want to say after 2010 or right before</p> <p>3 2010. They came up with a rule that they wrote</p> <p>4 up a disclaimer that we had to present in large</p> <p>5 fund to all customers and all customer documents</p> <p>6 and on our website and no matter what we say and</p> <p>7 no matter what we do, FX customers should note</p> <p>8 that the retail Effex dealers, which is FXCMs of</p> <p>9 the world, are trading against them and have</p> <p>10 their opposite interests, you know, et cetera, et</p> <p>11 cetera, et cetera.</p> <p>12 So that rule -- that disclaimer went</p> <p>13 to -- all US customers had to sign that</p> <p>14 disclaimer. So that had to be prominently on</p> <p>15 every where. So the -- they were not really in</p> <p>16 the mood to approve, you know, even when the NFA</p> <p>17 wanted the rules on different business models of</p> <p>18 different firms, they said, no, they're treating</p> <p>19 every firm the same and they considered us all to</p> <p>20 be trading against the customer by all the firms</p> <p>21 no matter who they are. So that was kind of</p> <p>22 their take on the issue. So they didn't want to,</p> <p>23 quote, unquote, legitimize the industry by, you</p> <p>24 know, by making, you know -- by saying that, you</p> <p>25 know, there's external trading and that's real.</p> | <p style="text-align: right;">Page 256</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 A. The exact -- we had so many at that</p> <p>3 time because, clearly, this was an emergency</p> <p>4 time. So I do not recall this specific meeting.</p> <p>5 But I know the subject of what we discussed at</p> <p>6 all these meetings.</p> <p>7 Q. Okay. If you go down to Page 2 about</p> <p>8 halfway through the first full paragraph and in</p> <p>9 there the minutes here say that you discussed an</p> <p>10 execution study with the Board.</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. And do you recall discussing an</p> <p>14 execution study with the Board?</p> <p>15 A. Yes.</p> <p>16 Q. Was this the same study that you</p> <p>17 referred to earlier about improvements in</p> <p>18 execution?</p> <p>19 A. Correct. This was, obviously, a</p> <p>20 study that we prepared way before 2016 and we</p> <p>21 already presented it to foreign regulators, to</p> <p>22 the US regulators. This is just in the -- and</p> <p>23 the Board knew about. This is just reiterating</p> <p>24 it.</p> <p>25 Q. Did FXCM ever publish this study</p>  |
| <p style="text-align: right;">Page 255</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 Q. Okay. Thank you for that</p> <p>3 explanation.</p> <p>4 And now I'm going to show you the</p> <p>5 next exhibit. This is Exhibit 61, which should</p> <p>6 be up now.</p> <p>7 (Deposition Exhibit 61, FXCM Inc.</p> <p>8 Minutes of Special Telephonic Board of Directors</p> <p>9 Meeting December 14, 2016 New York, York</p> <p>10 EY-GBI-WP-00004278 to EY-GBI-WP-00004280 marked</p> <p>11 Confidential, was marked for identification.)</p> <p>12 Q. Let me know when you can see it.</p> <p>13 A. I can see it.</p> <p>14 Q. Okay. And take a minute to review.</p> <p>15 MR. BAKER: As you do, I'll note for</p> <p>16 the record Exhibit 61 is EY-GBI-WP 4278.</p> <p>17 Q. Mr. Niv, just let me know when you're</p> <p>18 ready.</p> <p>19 A. I am ready.</p> <p>20 Q. Okay. Is this the minutes of a</p> <p>21 telephonic board meeting of FXCM on December 14,</p> <p>22 2016?</p> <p>23 A. Yes.</p> <p>24 Q. If you go down to page -- well,</p> <p>25 first, do you recall this meeting?</p>  | <p style="text-align: right;">Page 257</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 anywhere?</p> <p>3 A. Yes.</p> <p>4 Q. Where?</p> <p>5 A. So we published it on our website and</p> <p>6 the NFA called 2 minutes -- like 20 minutes later</p> <p>7 literally and told us to take it down, because it</p> <p>8 was disparaging the CME, because we compared our</p> <p>9 execution to the execution on CME, UBS and</p> <p>10 Reuters and CME is their favorite child. So they</p> <p>11 decided this is no good because they're -- again,</p> <p>12 the NFA is the National Futures Association.</p> <p>13 When it was mandated by Congress in 2000 to</p> <p>14 oversee -- the retail FX 2 is the futures</p> <p>15 association and, therefore, they did not want to</p> <p>16 bias the futures exchange, which was on their</p> <p>17 board, et cetera, et cetera.</p> <p>18 So they told us to take it down. We</p> <p>19 did publish the study on our foreign websites</p> <p>20 later and they initially took us to take it out</p> <p>21 of the foreign websites too.</p> <p>22 But we said, you kind of don't have</p> <p>23 jurisdiction over that. And we published this,</p> <p>24 you know, this study. And they're not allowed to</p> <p>25 tell us not to publish because their rules state</p> |

65 (Pages 254 - 257)



|  |   |
|--|---|
| <p style="text-align: right;">Page 258</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 we can publish anything we want, as long as we</p> <p>3 have the backup of evidence. And we had enormous</p> <p>4 backup for this evidence. And, in fact, we gave</p> <p>5 they are presentation of all of it with the</p> <p>6 evidence, with the audit and everything and they</p> <p>7 still don't want us to publish it. So it was</p> <p>8 never published in the US. But there is</p> <p>9 electronic copies of it available widely.</p> <p>10 Q. And the last sentence of this</p> <p>11 paragraph reads, "It is therefore not unexpected</p> <p>12 that the NFA refused to allow FXCM US to print</p> <p>13 its execution study while it was widely embraced</p> <p>14 by foreign regulators."</p> <p>15 Was it your understanding that the</p> <p>16 execution study "was widely embraced by foreign</p> <p>17 regulators"?</p> <p>18 A. Yes. And that's why -- if you see</p> <p>19 the history of this entire sham, no foreign</p> <p>20 regulator took actions against FXCM for the same</p> <p>21 reasons -- for the same thing that the NFA did.</p> <p>22 Again, the NFA did this because they are biased</p> <p>23 towards the futures industry. If you look at</p> <p>24 foreign regulators, they are a government agency.</p> <p>25 They are not biased and they, you know, just,</p> | <p style="text-align: right;">Page 260</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 A. Yes.</p> <p>3 Q. Was the UK -- was FXCM's UK website</p> <p>4 one of the places that FXCM published the study?</p> <p>5 A. Correct. And we made a presentation.</p> <p>6 I made the presentation to the FCA, which is the</p> <p>7 UK regulator. I know, you know, my staff in Asia</p> <p>8 made that presentation to the Australian</p> <p>9 regulator, you know, we did a Hong Kong</p> <p>10 regulator. I mean, we did Japanese regulator.</p> <p>11 Clearly, we put everybody there.</p> <p>12 And that's why there is no -- those</p> <p>13 people accepted, you know, the work that clients</p> <p>14 benefitted from, you know, from the Effex/FXCM</p> <p>15 relationships and benefitted tremendously from it</p> <p>16 as, you know, proof that this was not bad for</p> <p>17 clients and did not have -- was not a -- you</p> <p>18 know, this was -- this is form over substance,</p> <p>19 basically, is what it is.</p> <p>20 MR. DAHAN: Josh, I believe there was</p> <p>21 plenty time to produce this before the</p> <p>22 litigation.</p> <p>23 MR. BAKER: That's fine. Thank you.</p> <p>24 Q. Did any of the foreign regulators</p> <p>25 that FXCM dealt with ever explicitly endorse or</p> |
| <p style="text-align: right;">Page 259</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 you know, agree that a disclosure, you know,</p> <p>3 disagreement absence -- you know, in the absence</p> <p>4 of a rule that mandated the exact language in a</p> <p>5 disclosure -- we did disclose just not in -- you</p> <p>6 know, they said we should have disclosed more</p> <p>7 than we did. And it's not the same as we --</p> <p>8 foreign regulators wanted to know if we cheated</p> <p>9 our clients.</p> <p>10 And at the end of the day, we did not</p> <p>11 cheat our clients. Better than that we saved our</p> <p>12 clients an extraordinary amount of money. You're</p> <p>13 not talking about a few dollars. So, if you read</p> <p>14 this study, you'll note somewhere in the area of</p> <p>15 hundred something and 200 plus million dollars a</p> <p>16 year of savings trading with us versus if had our</p> <p>17 customers been doing the same trades on a</p> <p>18 different venue, right. That's a significant</p> <p>19 amount of money, something that amounted about \$2</p> <p>20 per trade.</p> <p>21 Q. Okay. And you mentioned this was</p> <p>22 something FXCM published on foreign non-US</p> <p>23 websites?</p> <p>24 A. Uh-huh, foreign websites.</p> <p>25 Q. On its foreign websites?</p>  | <p style="text-align: right;">Page 261</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 show anything in writing endorsing FXCM's</p> <p>3 execution study?</p> <p>4 A. Foreign regulators don't -- I mean,</p> <p>5 regulators don't endorse.</p> <p>6 MR. DAHAN: Objection to form.</p> <p>7 A. I've never heard of regulators</p> <p>8 endorse anything.</p> <p>9 Q. To put this -- that's fair. I guess</p> <p>10 we'll have to put it together.</p> <p>11 Before we said -- and in the minutes</p> <p>12 it says, the study's widely embraced by foreign</p> <p>13 regulators.</p> <p>14 What did that mean?</p> <p>15 A. Which means that regulators, you</p> <p>16 know, specifically, said, you know, that because</p> <p>17 there is no customer harm and the studies prove</p> <p>18 that there is -- not just no customer harm but</p> <p>19 actually large customer benefit, they basically</p> <p>20 did not, you know, see a reason to penalize FXCM</p> <p>21 in a way that the US regulator did.</p> <p>22 Q. And is that something that they</p> <p>23 expressed to FXCM in writing or just in</p> <p>24 conversations?</p> <p>25 A. I'm not aware of how much of it is in</p>  |